



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Doc. No. AMS-FV-13-0005; FV13-925-1 PR]

**Grapes Grown in Designated Area of Southeastern California;
Increased Assessment Rate**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the assessment rate established for the California Desert Grape Administrative Committee (Committee) for the 2013 and subsequent fiscal periods from \$0.0150 to \$0.0165 per 18-pound lug of grapes handled. The Committee locally administers the marketing order that regulates the handling of grapes grown in a designated area of southeastern California. Assessments upon grape handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins January 1 and ends December 31. The assessment rate would remain in effect indefinitely unless modified, suspended or terminated.

DATES: Comments must be received by [INSERT DATE 15 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet:

<http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at:

<http://www.regulations.gov>. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Kathie M. Notoro, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: Kathie.Notoro@ams.usda.gov or Martin.Engeler@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 925, as amended (7 CFR 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, grape handlers in a designated area of southeastern California are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable grapes beginning on

January 1, 2013, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would increase the assessment rate established for the Committee for the 2013 and subsequent fiscal periods from \$0.0150 to \$0.0165 per 18-pound lug of grapes.

The grape order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of

expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of grapes grown in a designated area of southeastern California. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2012 and subsequent fiscal periods, the Committee recommended, and the USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA based upon a recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on March 4, 2013, and unanimously recommended 2013 expenditures of \$100,000 and an assessment rate of \$0.0165 per 18-pound lug of grapes handled. In comparison, last year's budgeted expenditures were \$95,500. The assessment rate of \$0.0165 is \$0.0015 higher than the \$0.0150 rate currently in effect. The Committee also estimated shipments for the 2013 season to be 5,800,000

lugs. The higher assessment rate, applied to estimated shipments of 5,800,000 lugs, would generate \$95,700 in revenue, which is slightly less than the budgeted expenses. However, combining this revenue with \$4,300 from financial operating reserves would provide sufficient revenue to cover the Committee's budgeted expenses.

The major expenditures recommended by the Committee for the 2013 fiscal period include \$15,500 for research, \$17,000 for general office expenses, and \$67,500 for management and compliance expenses. In comparison, major expenditures for the 2012 fiscal period included \$15,500 for research, \$17,500 for general office expenses, and \$62,500 for management and compliance expenses.

The assessment rate recommended by the Committee was derived by evaluating several factors, including estimated shipments for the 2013 season, budgeted expenses, and the level of available financial reserves. The Committee determined that it could utilize \$4,300 from its financial reserves and still maintain the reserves at an acceptable level. The remaining \$95,700 necessary to meet budgeted expenses would need to be raised through assessments. Thus, dividing the \$95,700 in necessary assessment revenue

by 2013 estimated shipments of 5,800,000 lugs results in an assessment rate of \$0.0165.

Reserve funds by the end of 2013 are projected at \$53,972, which is well within the amount authorized under the order. Section 925.41 of the order permits the Committee to maintain approximately one fiscal period's expenses in reserve.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA based upon a recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA.

Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate the Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2013 budget and

those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 14 handlers of southeastern California grapes who are subject to regulation under the order and about 41 grape producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000. Nine of the 14 handlers

subject to regulation have annual grape sales of less than \$7,000,000, according to Committee and USDA data. In addition, it is estimated that ten of the 41 producers have annual receipts of less than \$750,000. Based on the foregoing, it may be concluded that a majority of grape handlers regulated under the order, and about 10 of the producers could be classified as small entities under the Small Business Administration definitions.

This proposal would increase the assessment rate established for the Committee and collected from handlers for the 2013 and subsequent fiscal periods. The Committee unanimously recommended an assessment rate of \$0.0165 per 18-pound lug of grapes handled, and 2013 expenditures of \$100,000. The proposed assessment rate of \$0.0165 is \$0.0015 higher than the 2012 rate currently in effect. The quantity of assessable grapes for the 2013 season is estimated at 5,800,000 18-pound lugs. Thus, the \$0.0165 rate should generate \$95,700 in income. Combined with \$4,300 from financial reserves, this should provide adequate revenue to meet the 2013 fiscal period expenses. In addition, reserve funds at the end of the year are projected to be \$53,972, which is well within the order's limitation of approximately one fiscal period's expenses.

The major expenditures recommended by the Committee for the 2013 fiscal period include \$15,500 for research, \$17,000 for general office expenses, and \$67,500 for management and compliance expenses. In comparison, major expenditures for the 2012 fiscal period included \$15,500 for research, \$17,500 for general office expenses, and \$62,500 for management and compliance expenses.

Prior to arriving at this budget, the Committee considered alternative expenditures and assessment rates, including not increasing the \$0.0150 assessment rate currently in effect. Based on a crop estimate of 5,800,000 18-pound lugs, the Committee ultimately determined that revenue generated from an assessment rate of \$0.0165, combined with funds from the financial reserve, would adequately cover increased expenses while providing an adequate 2013 ending reserve.

A review of historical crop and price information, as well as preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2013 season could average about \$8.00 per 18-pound lug of grapes handled for Southeastern California grapes. Utilizing this estimate and the proposed assessment rate of \$0.0165, estimated assessment revenue as a percentage of

total estimated producer revenue would be 0.20 percent for the 2013 season (\$0.0165 divided by \$8.00 per 18-pound lug). Thus, the assessment revenue should be well below 1 percent of estimated producer revenue in 2013.

This proposal would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the grape production area and all interested persons were invited to attend and participate in Committee deliberations on all issues. Like all Committee meetings, the March 4, 2013, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by

the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California grape handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreement and orders may be viewed at:
www.ams.usda.gov/MarketingOrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to

Jeffrey Smutny at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2013 fiscal period began on January 1, 2013, and the order requires that the rate of assessment for each fiscal period apply to all assessable grapes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is proposed to be amended as follows:

PART 925 - GRAPES GROWN IN A DESIGNATED AREA OF
SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 925.215 is revised to read as follows:

§ 925.215 Assessment rate.

On and after January 1, 2013, an assessment rate of \$0.0165 per 18-pound lug is established for grapes grown in a designated area of southeastern California.

Dated: May 8, 2013

Rex Barnes
Acting Administrator
Agricultural Marketing Service

Billing Code: 3410-02 P

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